

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	

**REPLY COMMENTS OF THE MAINE PUBLIC UTILITIES
COMMISSION AND THE VERMONT PUBLIC SERVICE BOARD**

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Petitioners in this proceeding, the Maine Public Utilities Commission and the Vermont Public Service Board, hereby respectfully file reply comments, as provided by the Commission's Notice.¹ The only party filing opposition comment was AT&T Corp ("AT&T"). Verizon filed supportive comments.

I. SUMMARY

AT&T raises three kinds of arguments. The first is that the Commission cannot or should not correct errors in its support calculation because to do so is "impractical." The second is that, for various reasons, Petitioners' claims are not timely and should be heard in the future or should have been raised in the past. Third, AT&T asserts that Petitioners have made substantive errors in their petition.

The Commission should reject all three arguments. Relief is not impractical, and indeed would represent only a minute adjustment to the large cash flow of USAC. All of petitioners' arguments are properly raised here and should be considered on the merits. AT&T misunderstands two of the Petitioners' key arguments, and its objections should be disregarded. Finally, the Commission should not make any adverse decisions on the Petition without first collecting data on special access line locations and numbers.

II. RELIEF IS NOT IMPRACTICABLE.

AT&T argued that it is "impractical" to grant relief to petitioners because "[t]he current size of the universal service fund is fixed" and because granting relief would produce payments in excess of "the actual size of the fund."² Neither argument has merit.

¹ Petition for Reconsideration of Action in Rulemaking Proceeding, 67 Fed. Reg. 48, 11116 (Mar. 12, 2002).

² AT&T Comments at 14-15.

First, AT&T's argument proves too much. If the size of the fund is fixed, this precludes changes to the fund size for any reason. AT&T would also presumably oppose the correction of an arithmetic error if that relief would increase the size of the fund. Clearly this position is untenable. The Commission must correct at least some errors, regardless of the expectations of AT&T.

Furthermore, AT&T's opposition states that "[t]he current size of the universal service fund is fixed and is sized to produce sufficient support given the projected requirements of 2002." Petitioners interpret this statement as an assertion that the amount of contributions that AT&T must make in 2002 is already known. This assertion appears to be factually incorrect. Petitioners understand that USAC has filed its second quarter report for 2002, and the contribution rates for the last two quarters of 2002 are not yet determined. The final rates in those two quarters will be influenced by many presently undetermined facts, such as lifeline participation and interest earnings.

AT&T is also incorrect in suggesting that providing relief here could make the universal service fund insolvent. The chance of this is negligible. If Petitioners receive the requested relief, they would receive a total of \$26.5 million in 2002, as opposed to \$14.5 million. The difference is approximately \$12 million. It appears that the fund could pay out the relief requested by Petitioners 180 times before it would run out of cash.³ Finally, even if the fund were to somehow find itself short of cash, implausible as that might be, incremental payments could simply be deferred by one quarter until more cash is available.

Petitioners have long understood that AT&T usually opposes any increase in a high cost program that does not also reduce access charges. Nevertheless, the

preferences of payors is not a sufficient legal basis to provide less than sufficient support to high-cost payees who otherwise must charge high rates to end users. If mistakes have been made in calculating support, the mistakes should be corrected, even if payors such as AT&T have to increase or decrease their contributions. AT&T's arguments about the impracticality of relief should be rejected outright.

III. THE COMMISSION SHOULD REACH THE MERITS OF THE PETITION.

AT&T's second argument is that, for a variety of reasons, Petitioners' claims should be heard anywhere but here. According to AT&T, some issues should have been raised in past proceedings; others should be held for a "comprehensive review" that may occur at an unspecified time in the future. Petitioners could not possibly have met the standard suggested by AT&T's arguments, and it would be unfair to deny their claims a review on the merits. Nor is it reasonable to ask Petitioners to wait for sufficient support until the completion of a presently unscheduled comprehensive review.

A. The Commission must rule on the claims here to comply with Section 254.

Even granting for the sake of argument that Petitioners somehow did fail to raise timely objections in previous proceedings, the Commission still should rule on the merits of the Petition here. The Petition casts serious doubt on whether the Commission has satisfied its affirmative obligation to provide sufficient support to Verizon-Maine and Verizon-Vermont. Regardless of any possible procedural failures in the past, that alone is sufficient reason for the Commission to grant reconsideration and to review the claims on the merits. The Commission might prefer that the issues raised in the Petition had been raised earlier or later. Yet if the Commission fails to act here, it will not be

³ The second quarter of 2002 report from USAC shows a cash balance of \$2.26 billion.

providing sufficient support to Maine and Vermont and thus will be failing to comply with section 254 of the Act. Under the recent ruling of the 10th Circuit Court of Appeals, the Commission has an affirmative duty to explain how its actions comply with the requirements of section 254.⁴

B. Petitioners did not know and should not reasonably have been expected to know that data errors would harm their customers until the issuance of the “2002 Line Count Order.”

1. The 2002 Line Count Order implicitly used a different method to update line counts.

AT&T correctly asserts that annual updates to line counts produce changes to support amounts. Indeed, Petitioners are well aware that both Verizon-Maine and Verizon-Vermont experienced support reductions in 2001. Petitioners are also well aware that changes to input data produce significant changes to support. They agree, however, that support reductions may be the natural result of updated data. From time to time increases may be appropriate.

In any case, AT&T missed the point. Contrary to AT&T’s assertions, Petitioners did not have meaningful early notice of important new changes to the 2002 support calculation, notice that would have allowed an informed and timely response. AT&T

⁴ “If the agency has failed to provide a reasoned explanation for its action, or if limitations in the administrative record make it impossible to conclude the action was the product of reasoned decisionmaking, the reviewing court may supplement the record or remand the case to the agency for further proceedings. It may not simply affirm.” *Qwest v. Federal Communications Commission*, 258 F.3d 1191, 1198-99 (10th Cir. 2001) (quoting *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1575 (10th Cir.1994)).

falsely asserts that the 2002 line count update was substantively similar to the 2001 line count update. While there were many similarities, there was also an important difference.

In both years updated line count data were entered into the model and then the model was run for each state. However, special access line counts in 2002 were controlled by 2000 ARMIS submissions, and this added a new factor.

The 1999 ARMIS special access line counts were used to calculate 2001 support amounts. Changes from 1998 to 1999 were due primarily to growth or shrinkage in the number of lines sold. This is precisely what the Commission was trying to capture with its annual update orders.

The 2000 ARMIS special access line counts, used to calculate 2002 support amounts, were substantially different from the 1999 ARMIS reports. The Commission gave more explicit written directives to carriers about how to report this 2000 data. In addition, carriers received additional instruction at a meeting held by the Accounting Safeguards Division. Thus the 2002 support changes are both quantitatively distinct and qualitatively different from the 2001 changes.

AT&T is right that that data changes will produce support changes. But there was nothing in the Notice to forewarn the Petitioners that explained the new reporting policy, gave notice that this change in policy might produce significant line count changes, sought comment on the accuracy of those changes, or gave notice that the results might substantially alter support amounts.

2. Only by running the cost model it is possible to understand the effects of methodology changes for special access line counts.

AT&T observes that “it is hardly a secret that updating line counts can substantially change the amount of universal service support.” Petitioners agree that *some change* is obvious, but it is far from obvious *what kind of change* will result.

The model is a highly complex tool, and any change can have unpredictable effects. It is particularly hard to predict the effects of systematic changes to collection methods for input data. Specifically as to line counts, the impact of increased line counts depends greatly on location and amount. Support to a single carrier is affected by its reported lines, and thus their average cost, but also by the national average costs. This in turn is affected by line counts everywhere else. A change in one place can substantially alter results in another place. Thus a cost change in New York normally has no effect on New York’s support, because that support is zero. However, the cost change can alter the national average cost, and the effect flows through to Maine, Vermont and other states that receive support. The only way to understand the effect of a systematic change, such as a change in line count methodology, is to run the model for every state, to produce an aggregate national cost, and then to calculate support. This requires running the Synthesis Cost Model for the entire nation.

3. Petitioners could not reasonably be expected to run the model for the entire nation and thus could not foresee the 2002 support results.

AT&T is intimately familiar with the model. Its employees and agents developed substantial portions of the model before it was adopted by the Commission, and AT&T has undoubtedly devoted considerable resources since that time. However, similar

expertise is lacking among state commissions. Moreover, running the model for the entire nation is very time consuming. Petitioners estimate that this task would take somewhere between three and ten weeks on their current computer, running one company at a time.⁵

Few if any state commissions, and certainly not Maine's nor Vermont's, have the resources to run the Synthesis Cost Model on a nationwide basis in a short time.⁶ Thus few, if any, state commissions could understand in advance the consequences of a nationwide change in line count methodology.

For this reason, the Commission should go to extra lengths to explain in its notices the likely effects of data methodology changes. No such advance detailed explanation was given here. The Commission's September 2001 notice regarding updated line counts asked for comments on whether updated line counts should be used, how revised line counts should be allocated to classes of service, and how line revised special access line counts should be allocated to wire centers. The notice never asked for comments regarding the validity or correctness of the revised line count data. Nothing in the 2002 Line Count Notice observed that a methodology change had occurred for special access lines in the 2000 ARMIS report. Nor did the notice explain that this change would have enormous consequences for support because DS-3 lines are reported as 672 voice equivalent circuits.

⁵ Running the model even for a small state like Maine takes almost a full working day on Petitioners' computer devoted to that use. Accordingly, the job often runs overnight and is completed the following morning. Running a large state like California takes several days. When petitioners did try to run California, the program filled up the computer's disk storage after several hours and the computer crashed.

⁶ This task is so complex that even the Commission itself apparently delegates the final calculation to USAC

Petitioners faced an additional barrier to anticipating their 2002 support amounts. In a Public Notice released on June 20, 2001, the Bureau announced the posting of a version of the cost model in Delphi computer language on its web site.⁷ Petitioners' staff understood from Commission staff that the two versions of the model were not exactly equivalent and did not produce the same results. These differences soon became apparent as Petitioners' staff began to work with the new Delphi model. The Delphi version produced substantial cost reductions in many rural wire centers, in some cases reducing costs by more than \$10.00 per line per month.⁸

AT&T asserts that the Commission never indicated that the model would change. According to AT&T, the Commission merely sought comment on the language change and it is "axiomatic that a Commission Public Notice seeking comment from interested parties does not signify a rule change."⁹ AT&T apparently believes that state commissions with an interest in universal service not only should have downloaded the Delphi version of the model and run it for the entire country, but they should have done the same thing with the old Pascal version as well. Thus what is an unworkably massive task for state commissions becomes doubly unworkable. To estimate support for 2002, state commissions would have to engage a suite of computers, some evaluating the Delphi model and some evaluating the Pascal model. This is clearly beyond any reasonable expectation.

⁷ *Common Carrier Bureau Seeks Comment on Translation of Cost Model to Delphi Computer Language and Announces Posting of Updated Cost Model*, CC Docket No. 96-45, Public Notice (rel. June 20, 2001).

⁸ AT&T criticizes Petitioners in Footnote 9 of its comments for failing to assert that the results of the Delphi model analysis were different from the results of the Turbo Pascal model. Petitioners do so assert here. Cost results were materially different. Of course, because it is impossible to calculate *support* without calculating cost for the entire country, Petitioners are not able to make that assertion, despite the high probability that it is true.

⁹ AT&T Comments at 9.

Moreover, AT&T fails to mention that the Commission's own staff was behaving in October of 2001 as though the Delphi model was very likely to be adopted. Indeed, Commission staff actually made modifications *to the Delphi model* that were offered by AT&T's own staff, and failed to make parallel modifications to the old Pascal version. This is in itself sufficient evidence that the Commission's own staff thought it highly likely that 2002 support would be calculated by the new and improved Delphi model.

In short, the Commission had two interacting changes in play at the same time: line count changes and model changes. Costs in rural areas were dropping unexpectedly in many wire centers, but Petitioners could not isolate the cause.

Then, on December 18, 2001 the Commission issued the final 2002 Line Count Order and a related notice estimating support amounts. Only then did Petitioners learn that the Commission had abandoned the Delphi model. At the same time Petitioners learned that they were nevertheless scheduled to suffer substantial losses of support.

It was also only after we reviewed the results of the December 2001 order with Verizon that Petitioners identified special access line counts as the cause of the support reductions. Therefore, the pending reconsideration petition is the first time that Petitioners knew or could be expected to know that problems associated with special access line counts were the cause of the large shifts of universal service support away from the petitioner's states. Under such confusing circumstances, reconsideration is entirely appropriate.

4. Petitioners exercised reasonable diligence to understand the effects of proposed changes for 2002.

After the 2002 Line Count Notice was issued on September 11, 2001, Petitioners' staff began to obtain the data necessary to run and test the Delphi language model. After numerous discussions with Commission staff, our staff finally arranged a meeting with Commission staff in Washington, D.C. in late October of 2001. At that meeting, petitioners' staff received a copy of the model itself, the Delphi version of the model.¹⁰ Commission staff spent a good deal of time instructing Petitioners' staff on how to run the Delphi version. Although there were indications that the Delphi model was not performing exactly as expected, Commission staff gave no hint that the Commission might revert to the Pascal version of the model. Moreover, Petitioners' staff were never informed that Verizon's support in their states was likely to decline due to significant changes to line count input files.¹¹ Thus Petitioners had no reason to suspect that the anomalous results were being caused by anomalous input data.

Thereafter, Petitioners' staff then began a series of investigations into the effects of the model. An initial familiarization period was required, but anomalous results soon appeared. Staff spent a great deal of time trying to understand the very complex relationship among various line count data inputs, how the model processes those inputs, and how it reports outputs. Other investigations involved comparing detailed Delphi outputs for 2002 with known Pascal outputs for 2001, and unsuccessful attempts to reconcile the two. Despite the considerable work, little was gained. In retrospect, the performance of the Delphi model was an enormous confounding factor.

¹⁰ At the same meeting, Petitioners' staff also received the proprietary 2001 switched line counts for the first time, data that are necessary to run both the Pascal and Delphi versions of the model.

Only on December 18, 2001 did Petitioners learn that the Delphi variations were moot and that Maine and Vermont states would nevertheless experience substantial support reductions. Only at that point was it reasonable to expect the spotlight to turn toward line counts.

AT&T faults Petitioners for failing to discover the line count problem sooner. Petitioners would be pleased to have AT&T's mastery of the topic, and we would have been pleased to have discovered the problem sooner. Our investigations, although conscientious, were baffled by the added complexity of having both the model and its inputs in play at the same time. We knew something was wrong, but were unable to isolate the cause. We too wish that we had discovered the problem sooner. Perhaps Dr. Fleming wished he had discovered penicillin sooner as well. In any case, the problem with special access has now been identified, and the Commission should deal with the problem now, not next year.

5. Petitioners could not have identified these problems in the ARMIS docket.

AT&T states that if Petitioners have problems with the ARMIS data, they should have raised the problem in the ARMIS docket. AT&T misses the point. Petitioners' problem is not in the ARMIS docket. The Commission is free in its ARMIS reports to collect any sort of data that it wishes to collect. The problems we have identified with ARMIS would be inconsequential for infrastructure monitoring purposes. It is the inappropriate use of that data in this docket to calculate universal service support that Petitioners challenge.

¹¹ No estimate of 2002 support was provided at that meeting.

The Commission issued instructions on how to complete the 2000 ARMIS reports at the end of 2000. At that time no one knew or could have known that the Commission would not issue any subsequent data requests concerning special access line counts. Thus no one could have known that ARMIS data would be later combined with data from a 1999 universal service data request and forced into the 2002 support calculation. Far less could one know that the decision to ask certain carriers to alter their reporting of multi-node special access circuits would cause the movement of millions of dollars between states.

Furthermore, Petitioners did not know, nor could they have been expected to know, the nature of the ARMIS special access reporting problems at the time the Commission reviewed ARMIS reporting methodology. We only discovered the ARMIS reporting problem because of the large unexpected universal service cost shifts. This led backwards to the increased special access line counts, which led backwards to the change in reporting procedures. AT&T's suggestion that the Commission should not consider ARMIS reporting problems here because this docket only concerns "line counts" would ignore the root cause of the unreliable and unjust results.

C. Petitioners' claims are not improper collateral attacks on other orders.

The order in this case determines the support the petitioner's states receive from the non-rural universal service fund. All of Petitioners' arguments, including those relating to the problems with 2000 ARMIS data, the use of the non-updated 1999 data request data and problems with the Synthesis Model relating to DS-3 lines, affect the support that will be received by Verizon-Maine and Verizon-Vermont in 2002.

Petitioners did not become aware of these problems until we realized what circumstances were causing the large shifts in support between states. We would have raised these concerns earlier if we had known of the problems at that time. However, since this is the only proceeding that determines support for non-rural carriers, we believe it is appropriate to bring to the attention of the Commission and request reconsideration of the line count problems which caused that lost support.

Under the standards set forward in 47 C.F.R. 429(b) the Commission will grant a petition for reconsideration of the petition “relies on facts which have not been previously presented to the Commission” and “consideration of the facts relied on is required in the public interest.” All of the facts and arguments made by the petitioners relate to the ultimate level of support made to non-rural carriers. Unless the points raised by the petitioners are considered by the Commission here, the public interest as codified by section 254 cannot be assured. Section 254(b)(3) requires sufficient support to allow comparable rates and service between urban and rural areas. If the support calculation contains uncorrected methodological or arithmetical errors or if the methodology is internally inconsistent the Commission will not be able to demonstrate the amount of support is sufficient as is required under section 254. That sufficiency obligation under section 254 is a continuing obligation and all USF support amounts resulting from any proceeding must meet the sufficiency standard.

The narrow scope of reconsideration suggested by AT&T is not broad enough to allow the Commission to consider issues raised by the petitioners. Those issues must be addressed in order for support to Vermont and Maine to be sufficient. This petition challenges the result of the support calculation and identifies specific problems, which

cause that unjust, unfair, and unlawful result unless remedied. Any causes of that result is fairly within the scope of issues the Commission can and must reconsider. If as a matter of procedure other dockets must be reopened to do this, we request that result.

IV. AT&T RAISES NO VALID OBJECTION TO THE MERITS OF THE PETITION.

A. DS-3 line counts are skewing the model results and therefore undermine the sufficiency of support

Verizon's comments report that use of updated 2002 line counts inject unintended unreliability into the cost models. Petitioners agree with Verizon that the use of current model with the questionable special access line counts undermines the sufficiency of support to the petitioner's states. The reduction in support without any demonstrated reduction is the cost of providing service as described by Verizon is almost by definition going to create a fund that is not sufficient to allow comparable rate and services between rural and urban areas.

AT&T asserts that the model was originally designed to accommodate DS-3 lines and indeed has been operated since the beginning in this manner.¹² AT&T's statements on the problem with DS-3 lines are helpful, but do not contradict Petitioners' arguments. It will clarify matters to explain how Petitioners now understand that DS-3 lines are processed by the Commission and by the Synthesis Cost Model.

1. A total special access voice-equivalent channel count is developed for each study area. For 2002 support, the data came from the 2000 ARMIS "43-08" report. In this count, each DS-1 line counts as 28 voice channels and each DS-3 line counts as 672 voice channels.
2. The Commission staff then distributes the total channel count among the wire centers in the study area, using proportions

¹² AT&T Comments at 16.

gleaned from the 1999 Data Request responses. These channel counts by wire center then become inputs to the cost model.

3. The model then divides the channel count into a DS-1 segment (91.75 percent) and a DS-0 segment (8.25 percent). For each DS-3 assigned to a wire center, the result is 616.5 voice channels assigned to DS-1 and 55.44 voice channels assigned to DS-0.
4. The model then calculates the number of facilities. For DS-1 circuits, it divides 616.5 by 28, producing 22.02 DS-1 circuits. For DS-0, the number of facilities equals the number of channels, 55.44.
5. The model then assigns wire pairs to each DS-1 circuit (two wire pairs) and to each DS-0 circuit (one wire pair). The result is 44.04 DS-1 wire pairs and 55.44 DS-0 wire pairs, or a total of 99.48 wire pairs, almost exactly 100 pairs.
6. The model then geographically distributes those 100 wire pairs around the wire center, in the same manner that it distributes switched lines.
7. The model then calculates the forward-looking cost of building facilities in the wire center. Thus a DS-3 circuit generates costs equal to 100 voice grade circuits distributed around the wire center.

Petitioners understand the tenor of AT&T's comments to assert that all seven steps have been followed since the model was first used to calculate support in 2000. Petitioners do not contest this assertion. Indeed, AT&T is more likely to know the truth on this question than anyone else outside of Commission staff. We do make three additional related observations, however:

1. The Commission has never shown that it was aware this process is used for DS-3 circuits. The Commission did explain steps 3 through 5 in the Tenth Order,¹³ but nothing in that order shows an awareness that DS-3 data would be included in voice equivalent circuits. Indeed, as we noted in the Petition, footnote 242 stated "We note that only DS0 or DS1 service

¹³ Tenth Report and Order, paras. 99-100 (emphasis in original).

is provided under the model's conventions. The model does not allow for the deployment of DS2 or DS3 services.”

2. As AT&T notes, the Commission has found that it is appropriate for 2002 support to distribute special access lines to wire centers using older data. Petitioners have found nothing, however, to show that the Commission consciously intended this to cover DS-3 lines.
3. As AT&T notes, the Commission has found that it is appropriate for 2002 support to use national average assumptions concerning the mixture of DS-1 and DS-0 lines in each wire center. However, Petitioners have found nothing to show that the Commission has found that a DS-3 circuit imposes costs equal to 100 voice grade lines. Petitioners respectfully suggest that no such finding could be made because the costs are not the same. Furthermore, Petitioners agree with Verizon that the inclusion of DS-3 circuits in model inputs is distorting the results of the model and will produce insufficient support.

B. AT&T misunderstands the petitioners’ argument relating to inconsistent data sources.

The Petition criticized the fact that different carriers apparently constructed their data reports using different data sources. AT&T commented that “it would seem that cross-checking of databases would tend to *improve* the accuracy of the reports.”¹⁴

AT&T has again missed the point. We agree with AT&T that when a single company cross-checks a report using several databases, the results should be more reliable. What we criticize, however, is that *different* companies have used *different* methods to construct their data responses. The point is that the ARMIS reported data for special access lines is not consistent among companies because they do not use the same data sources to generate their ARMIS 43-08 reports.

¹⁴ AT&T comments at 11 (emphasis in original).

C. Petitioners are seeking data from Verizon to verify the scope of the special access problem, but the Commission should not deny the Petition without collecting further data.

Petitioners have raised numerous objections in this Petition to the methods by which the Commission has calculated special access line counts in each wire center. These objections fully support the relief sought in the Petition. Nevertheless, AT&T objects repeatedly that Petitioners have failed to provide evidence that these line counts are wrong.

Petitioners agree that to the extent the Commission requires additional support to grant the petition, it should conduct a limited factual investigation. To assist the Commission, we have sought limited data from Verizon.¹⁵ We will file that data as a subsequent *ex parte* presentation when it becomes available.

Petitioners do not have authority, however, to seek more than a small portion of the data relevant here. For example, increased DS-3 sales in New York City and other metropolitan centers may be depressing the nationwide average cost. However, neither the Maine nor the Vermont commissions can compel data reporting to test this hypothesis. Thus AT&T's comment puts the evidentiary burden in the wrong place. Petitioners respectfully assert that it is the Commission that must develop data and test whether its numerous assumptions, factors, ratios, and distributions of special access lines accurately reflect relative costs or whether, as the Petitioners assert, these factors unfairly create too many rural circuits, thereby wrongly depressing costs in rural areas and depriving those areas of sufficient support.

¹⁵ We have asked Verizon to file on a limited basis detailed special access counts for some wire centers in Maine and Vermont. We have also asked for the total DS-3 circuit sales in our states.

V. CONCLUSION

For the foregoing reasons, the Commission should grant Petitioners' original request for relief.

Respectfully Submitted,

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April 8, 2002

CERTIFICATE OF SERVICE

I, Brenda Chamberlin, hereby certify that on this 8th day of April, 2002, I have caused true copies of the preceding Reply Comments of the Maine Public Utilities Commission and the Vermont Public Service Board, to be served on the following parties by mailing, postage prepaid, to their addresses listed on the attached service list.

Dated: April 8, 2002
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